



Office of State Revenue
NSW TREASURY

ABN: 77 456 270 638

Revenue Ruling No. LT13

Residential Units Developed under Company Title

PREAMBLE

Prior to the enactment of the Strata Titles legislation, blocks of flats or residential units were developed under the Companies Act, now the Companies (N.S.W.) Code. In this type of development, exclusive right to occupy a particular unit is attached to the ownership of a particular share or group of shares in the company.

In some cases units are occupied as the shareholder's principal place of residence, while in other cases units are occupied by lessees.

The purpose of this ruling is to outline the provisions of the legislation in regard to the land tax liability of companies that own land on which home unit buildings are erected and to explain the effect of the legislation on the owners of shares in such companies.

RULING

Liability for Land Tax

1. A company that is the owner of land on which a home unit building is erected is liable for any land tax payable on that land. However, under Section 3A and 3B of the Land Tax Act 1956, a reduction of tax is allowed in respect of each "residential unit" which is used and occupied as a shareholder's principal place of residence, provided the relevant conditions specified in those sections are met. A "residential unit" is defined in Section 3(1) of the Land Tax Management Act 1956 as a flat that:
 - (a) forms part of a building comprising two or more flats;
 - (b) is used and occupied as the principal place of residence of a person who, by virtue of being the owner of shares in the company, has an exclusive right to occupy the flat, unless that person is such an owner by reason only of being a trustee.

Reduction of Tax for Residential Units -

2. A reduction of tax in respect of a "residential unit" is not available unless:
 - (a) the building contains:
 - (i) at least two "residential units"; or
 - (ii) one "residential unit" and at least one other flat that is used and occupied for residential purposes and for no other purpose by a

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person other than a shareholder, and there is a shareholder who, if the flat were vacant, would be entitled to occupy it by virtue of being such a shareholder;

- (b) all of the company's shareholders apply for a reduction, in a form approved by the Chief Commissioner (an application signed by a person authorised by all of the shareholders will be accepted);
- (c) the area of the parcel of land on which the building of which the unit forms part is erected does not exceed 2,100 square metres, or if it does exceed that area, the Chief Commissioner is satisfied that the whole of the parcel is reasonably used in connection with the occupation of the building; and
- (d) the shareholder entitled to occupy the unit is neither a company nor a company jointly with another person, unless the company is a trustee company acting in its representative capacity.

"Prescribed Proportion" and Calculation of Reduction

- 3. The amount of the reduction in tax allowed in respect of each residential unit is the "prescribed proportion" of the tax which would otherwise be payable. In their application for a reduction, the shareholders must specify the proportion that, in their opinion, is a fair and reasonable proportion of the adjusted value of the land attributed to the particular unit. In many cases the proportion specified is based on the proportion of shares in the company which relate to the particular unit. The proportion so specified is the "prescribed proportion", unless the Chief Commissioner is not satisfied that it is fair and reasonable, in which case the "prescribed proportion" is:

$$\frac{\text{floor area of the unit}}{\text{total floor area in the building separately occupied or capable of being separately occupied}}$$

- 4. If a reduction of tax is not allowable only because the area of the land exceeds 2,100 square metres and the Chief Commissioner is not satisfied that the whole of the area is reasonably used in connection with the occupation of the building, a reduction is allowable on a proportionate basis under Section 3A(4) of the Land Tax Act 1956. The reduction is calculated by first determining the reduction which would be allowable if the area requirements were met (called the "initial reduction"). The "initial reduction" is then reduced to an amount which bears to the "initial reduction" the same proportion that 2,100 square metres or the area which the Chief Commissioner is satisfied is reasonably used in connection with the occupation of the building, whichever is the greater, bears to the total area of the land.

5. This is demonstrated in the following example. A block of 10 units is constructed on 4,200 square metres of land with an adjusted value of \$400,000. One unit comprising one-tenth of the total floor area of the block meets the requirements necessary to qualify for a reduction. The Chief Commissioner is satisfied that 3,150 square metres of the land is reasonably used in connection with the occupation of the building.

Land tax on \$400,000 = \$5,600 (using 1988 land tax rates).

The "initial reduction" = 1 x \$5,600 = \$560

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10

The "initial reduction" is then reduced to:-

3,150 x \$560 = \$420

4,200

Tax payable = \$5,600 - \$420 = \$5,180

Application for a reduction

6. Where a company is entitled to a reduction of tax in respect of a "residential unit", it must make a fresh application for each year in which it is entitled to such a reduction.

Reduction Not Applicable to Exempt Land

7. A reduction of land tax under Section 3A and 3B of the Land Tax Act 1956 is not applicable for the 1987 and subsequent land tax years if the building on the land comprises two residential units or one residential unit and one other flat, and the land is exempt from tax under the Land Tax Management Act 1956. This ensures that if the land is exempt under the Land Tax Management Act, a reduction in tax under the Land Tax Act does not apply.

Liability of Shareholder Where Reduction Allowed

8. Where a reduction of tax has been allowed under Section 3A or 3B of the Land Tax Act 1956 in respect of land owned by a company, Section 63A of the Land Tax Management Act 1956 provides that the owner of shares in the company who occupies a residential unit in the building erected on the land cannot be required by the company to contribute directly or indirectly towards the tax payable in respect of the land, notwithstanding anything to the contrary contained in the memorandum or articles of association of the company.

R. P. DALEY
For Chief Commissioner of Land Tax
10 June 1988.

